

Panaji, 8th June, 2017 (Jyaistha 18, 1939)

SERIES II No. 10

OFFICIAL GAZETTE



GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There are two Extraordinary issues to the Official Gazette, Series II No. 9 dated 01-06-2017 as follows:—

- (1) Extraordinary dated 06-06-2017 from pages 1055 to 1056 regarding Corrigenda from Department of Panchayati Raj & Community Development.
- (2) Extraordinary (No. 2) dated 07-06-2017 from pages 1057 to 1062 regarding Notification from Department of Elections and Order from Department of Home.

GOVERNMENT OF GOA

Department of Education, Art & Culture

Directorate of Higher Education

Order

No. 5/29/AC/98-DHE/1844/Vol. II/662

Read: Government Order No. 5/29/AC/98-DHE/1844 dated 21-5-2009.

Whereas, vide Order read in preamble as above, Government of Goa has allowed the teacher and equivalent service cadres employees in Goa University and in its affiliated colleges and academic staff to avail the benefits of revised pay scales as recommended by the UGC and approved for implementation by the Government of India, vide scheme No. 1-32/2006-U.II/U.I (i) dated 31-12-2008, consequent upon acceptance of recommendations of the 6th Central Pay Commission.

And whereas, as envisaged under para (2) (a) (ix) of the said scheme, the incumbents Readers and Lecturers (Selection Grade) who have completed 3 years in the pay scales of Rs. 12,000-18,300 as on 01-01-2006 shall be placed in Pay Band of Rs. 37,400-67,000 with AGP of Rs. 9,000/- and shall be re-designated as Associate Professor;

And whereas, proviso 2(a)(x) of the said scheme says that the incumbents Readers and Lecturers (Selection Grade) who had not completed 3 years in the pay scales of Rs. 12,000-18,300 on 1-1-2006 shall be placed at the appropriate stage in the pay band of Rs. 15,600-39,100 with AGP of Rs. 8,000/- till they complete 3 years of service in the grade of Lecturer (Selection Grade)/Reader, and thereafter shall be placed in the higher pay band of Rs. 37,400-67,000 and accordingly re-designated as Associate Professor.

Now therefore, the following Assistant Professors of the Government College of Arts, Science & Commerce, Khandola, who have completed 3 years of service are eligible for placing them in the higher Pay Band-4 of Rs. 37,400-67,000 with AGP of Rs. 9,000/- and re-designated them as Associate Professor from the date of their eligibility:-

Sr. No.	Name of the faculty	Date of Selection Grade Scales		Date of eligibility for placement in the Pay Band-4 of Rs. 37,400-67,000
		Pre-revised Rs. 12,000-420-18,300	Revised: Rs. 15,600-39,100 + AGP: Rs. 8,000/-	
1	2	3		4

Government College of Arts, Science & Commerce, Khandola

- | | | |
|--|------------|-------------|
| 1. Ms. Radhamani Divakar,
Assistant Professor in Commerce | 15-02-2007 | 15-02-2010. |
|--|------------|-------------|

1	2	3	4
2.	Ms. Ana B. Gracy Fernandes, Assistant Professor in Computer Science	25-06-2007	25-06-2010.

By order and in the name of the Governor of Goa.

Diwan N. Rane, Under Secretary (Higher Education).

Porvorim, 1st June, 2017.

Order

No. 5/29/AC/98-DHE/1844/Vol. II/663

Read: Government Order No. 5/29/AC/98-DHE/1844 dated 21-5-2009.

Whereas, vide Order read in preamble as above, Government of Goa has allowed the teacher and equivalent service cadres employees in Goa University and in its affiliated colleges and academic staff to avail the benefits of revised pay scales as recommended by the UGC and approved for implementation by the Government of India, vide scheme No. 1-32/2006-U.II/U.I (i) dated 31-12-2008, consequent upon acceptance of recommendations of the 6th Central Pay Commission.

And whereas, as envisaged under para (2) (a) (ix) of the said scheme, the incumbents Readers and Lecturers (Selection Grade) who have completed 3 years in the pay scales of Rs. 12,000-18,300 as on 01-01-2006 shall be placed in Pay Band of Rs. 37,400-67,000 with AGP of Rs. 9,000/- and shall be re-designated as Associate Professor;

And whereas, proviso 2(a)(x) of the said scheme says that the incumbents Readers and Lecturers (Selection Grade) who had not completed 3 years in the pay scales of Rs. 12,000-18,300 on 1-1-2006 shall be placed at the appropriate stage in the pay band of Rs. 15,600-39,100 with AGP of Rs. 8,000/- till they complete 3 years of service in the grade of Lecturer (Selection Grade)/Reader, and thereafter shall be placed in the higher pay band of Rs. 37,400-67,000 and accordingly re-designated as Associate Professor.

Now therefore, the following Assistant Professor of the Sant Sohirobanath Ambiye Government College of Arts & Commerce, Virnoda, Pernem-Goa who have completed 3 years of service are eligible for placing them in the higher Pay Band-4 of Rs. 37,400-67,000 with AGP of Rs. 9,000/- and re-designated them as Associate Professor from the date of their eligibility:-

Sr. No.	Name of the faculty	Date of Selection Grade Scales Pre-revised Rs. 12,000-420-18,300 Revised: Rs. 15,600-39,100 + AGP: Rs. 8,000/-	Date of eligibility for placement in the Pay Band-4 of Rs. 37,400-67,000
Sant Sohirobanath Ambiye Government College of Arts & Commerce, Pernem			
1.	Dr. B. K. Haravi, Assistant Professor in Geography	24-12-2010	24-12-2013.

By order and in the name of the Governor of Goa.

Diwan N. Rane, Under Secretary (Higher Education).

Porvorim, 1st June, 2017.

Order

No. 5/29/AC/98-DHE/1844/Vol. II/664

Read: Government Order No. 5/29/AC/98-DHE/1844 dated 21-5-2009.

Whereas, vide Order read in preamble as above, Government of Goa has allowed the teacher and equivalent service cadres employees in Goa University and in its affiliated colleges and academic staff to avail the benefits of revised pay scales as recommended by the UGC and approved for implementation by the Government of India, vide scheme No. 1-32/2006-U.II/U.I (i) dated 31-12-2008, consequent upon acceptance of recommendations of the 6th Central Pay Commission.

And whereas, as envisaged under para (2) (a) (ix) of the said scheme, the incumbents Readers and Lecturers (Selection Grade) who have completed 3 years in the pay scales of Rs. 12,000-18,300 as on 01-01-2006 shall be placed in Pay Band of Rs. 37,400-67,000 with AGP of Rs. 9,000/- and shall be re-designated as Associate Professor;

And whereas, proviso 2(a)(x) of the said scheme says that the incumbents Readers and Lecturers (Selection Grade) who had not completed 3 years in the pay scales of Rs. 12,000-18,300 on 1-1-2006 shall be placed at the appropriate stage in the pay band of Rs. 15,600-39,100 with AGP of Rs. 8,000/- till they complete 3 years of service in the grade of Lecturer (Selection Grade)/Reader, and thereafter shall be placed in the higher pay band of Rs. 37,400-67,000 and accordingly re-designated as Associate Professor.

Now therefore, the following Assistant Professors of the Government College of Arts, Science & Commerce, Quepem who have completed 3 years of service are eligible for placing them in the higher Pay Band-4 of Rs. 37,400-67,000 with AGP of Rs. 9,000/- and re-designated them as Associate Professor from the date of their eligibility:-

Sr. No.	Name of the faculty	Date of Selection Grade Scales Pre-revised Rs. 12,000-420-18,300 Revised: Rs. 15,600-39,100 +AGP: Rs. 8,000/-	Date of eligibility for placement in the Pay Band-4 of Rs. 37,400-67,000
Government College of Arts, Science & Commerce, Quepem			
1.	Smt. Maria Jacqueline, Assistant Professor in Chemistry	01-10-2005	01-10-2008.
2.	Smt. Sarita P. Usgaonkar, Assistant Professor in Commerce	14-09-2009	14-09-2012.
3.	Ms. Olivia Soares, Assistant Professor in Computer Science	27-06-2007	27-06-2010.
4.	Shri Filipe Rodrigues, Assistant Professor in Computer Science	02-01-2009	02-01-2012.
5.	Ms. Liana Maria Ismalia Da Costa, Assistant Professor in Computer Science	08-09-2010	08-09-2013.

By order and in the name of the Governor of Goa.

Diwan N. Rane, Under Secretary (Higher Education).

Porvorim, 1st June, 2017.

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Department of Finance

Revenue & Control Division

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Order

No. 6/3/2015-Fin (R&C)/Part/2374

The Government of Goa is pleased to order transfer and posting of the following Commercial Tax Officers in the Office of the Commissioner of Commercial Taxes, with effect from 1st June, 2017, in the public interest:-

Sr. No.	Name of Commercial Tax Officer (CTO)	Present place of posting	Transferred and posted as
1	2	3	4
1.	Smt. Asha A. Harmalkar	CTO, Panaji Ward	CTO, Ponda Ward, vice Smt. Swati A. Dalvi, CTO transferred.

1	2	3	4
2.	Smt. Prasanni Halarnker	CTO (Headquarter), O/o. Commissioner of Commercial Taxes, Panaji	CTO, Bicholim Ward, vice Smt. Dipali Naik, CTO transferred.
3.	Smt. Dipali Naik	CTO, Bicholim Ward	CTO, Vasco Ward, against vacant post consequent upon promotion of Shri Chandresh Kunkalkar.
4.	Smt. Swati A. Dalvi	CTO, Ponda Ward	CTO, Panaji Ward, vice Smt. Asha A. Harmalkar, CTO transferred.
5.	Shri Gaurish V. Khedekar	CTO, Panaji Ward	CTO (Headquarter), O/o. Commissioner of Commercial Taxes, Panaji, vice Smt. Prasanni Halarnkar, CTO transferred.
6.	Smt. Darshani S. Dessai	CTO, Curchorem Ward	CTO, Margao Ward, vice Smt. Lata Madangerikar, CTO transferred.
7.	Smt. Lata Madangerikar	CTO, Margao Ward	CTO, Curchorem Ward, vice Smt. Darshani S. Dessai, CTO transferred.

All the above officials shall complete their handing over and taking over formalities within a period of week and submit compliance to the Finance (Rev. & Cont.) Department.

By order and in the name of the Governor of Goa.

Ajit S. Pawaskar, Under Secretary, Finance (R&C).

Porvorim, 26th May, 2017.

Order

No. 3/1/2009-Fin (R&C)/2413

In exercise of the powers conferred by sub-section (3) of Section 5 of the Goa Entertainment Tax Act, 1964 (Act No. 2 of 1964), the Government of Goa is pleased to exempt the Hindi film "SACHIN A BILLION DREAMS" from the liability of payment of entertainment tax in whole, when screened in any of the theatres in State of Goa for a period upto 30th June, 2017 from the date of publication of this Order in the Official Gazette.

By order and in the name of the Governor of Goa.

Michael M. D'Souza, Additional Secretary (Finance).

Porvorim, 1st June, 2017.

Department of Fisheries

Directorate of Fisheries

Order

No. DF/ADMN/RIT/2006/Vol.-IV/2017/1342

In pursuance to Clause 5 of the Right to Information Act, 2005 (hereinafter referred to as "the said Act"), the following officer/official are hereby appointed as Public Information Officer and Assistant Public Information Officer for the

Directorate of Fisheries, to deal with the applications received from the public under the said Act.

Sr. No.	Name and designation of the officer/official	Designated as	Jurisdiction
1	2	3	4
1.	Shri Chandrakant D. Velip, Dy. Director of Fisheries	Public Information Officer	State of Goa.

1	2	3	4
2.	Shri Prathamesh Shirodkar, Lower Division Clerk	Assistant Public Information Officer	State of Goa.

The Assistant Public Information Officer shall on receipt of the applications for information or appeal under the RTI Act forwarded the same forthwith to the Public Information Officer, as required under sub-section (1) of Section 7.

The Public Information Officer shall on receipt of a request under Section 6 as expeditiously as possible and in any case within thirty days of the request, either provide the information on payment of such fees as may be prescribed or reject the request for any of the reasons specified in Section 8 & 9.

The above designated officer/official shall exercise and perform the powers/functions laid down under the RTI Act, 2005 with immediate effect.

The Director of Fisheries will be the First Appellate Authority under this Act to hear the appeals against the decision of the Public Information Officer and Assistant Public Information Officer of the Department.

This supersedes earlier office order No. DF/RIA/2006. Vol. III/2015/4664 dated 29-11-2016.

Dr. *Shamila Monteiro*, Director (Fisheries).

Panaji, 1st June, 2017.

Department of Home

Home—General Division

Order

No. 24/51/2012-HD(G)/1512

On the recommendation of the Departmental Promotion Committee as conveyed by Goa Public Service Commission vide letter No. COM/II/11/58(2)/2011/626 dated 16-05-2017, the Government is pleased to promote the following Public Prosecutors (Ad hoc) to the post of Public Prosecutors (Group "A" Gazetted) in the Directorate of Prosecution on regular basis in the pay scale of Pay Band-3 of Rs. 15,600-39,100+Grade Pay Rs. 6,600/- and other allowances to be fixed as per Rules with immediate effect:-

1. Ms. Nita Marathe, Public Prosecutor.
2. Ms. Clarita A. Simoes, Public Prosecutor.

The pay of the above officers shall be fixed in terms of provisions of F.R. 22(1)(a)(1) and they shall exercise option within one month from the date of issue of this order.

The expenditure towards the pay and allowances shall be debited under:-

"Demand No. 5

2014 — Admn. of Justice, 00 (Non Plan);

114 — Legal Advisors & Counsels;

01 — Public Prosecutors (North);

02 — Public Prosecutors (South);

01 — Salaries".

By order and in the name of the Governor of Goa.

Neetal P. Amonkar, Under Secretary (Home).

Porvorim, 26th May, 2017.

Department of Industries

Directorate of Industries, Trade and Commerce

Order

No. 3/421/2009-10/ADM/DITC/PIO/2662

In pursuance to Clause 5 of the Right to Information Act, 2005 (hereinafter referred to as "the said Act") the following officers are hereby appointed as Public Information Officer and Assistant Public Information Officer for the Directorate of Industries, Trade and Commerce to deal with the application received from the public under the said Act.

Sr. No.	Designation of the Officer	Designated as	Jurisdiction
1.	General Manager (DIC), Department of Industries, Trade and Commerce	Public Information Officer	State of Goa.
2.	Functional Manager (II), Department of Industries, Trade and Commerce	Assistant Public Information Officer	State of Goa.

The Assistant Public Information Officer shall on receipt of the applications for information or appeal under the RTI Act, forward the same forthwith to the Public Information Officer, as required under sub-section (1) of Section 7.

The Public Information Officer shall on receipt of a request under Section 6, as expeditiously as possible and in any case within thirty days of the receipt of the request, either provide the information on payment of such fees as may be prescribed or reject the request for any of the reasons specified in Section 8 and 9.

The above designated officers shall exercise and perform the powers/functions laid down under the RTI Act, 2005 with immediate effect.

The Director of Industries, Trade and Commerce will be the First Appellate Authority under this Act to hear the appeals against the decision of the Public Information Officer of the Department.

This Order supersedes all Orders issued earlier by this Directorate in this connection.

V. P. Dangui, Director (Industries, Trade & Commerce).

Panaji, 26th May, 2017.

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Department of Labour

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Notification

No. 28/9/2017-LAB/Part-I/383

The following award passed by the Labour Court-II, at Panaji-Goa on 19-04-2017 in reference No. LC-II/IT/08/10 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Shaila G. Bhosle, Under Secretary (Labour).

Porvorim, 24th May, 2017.

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IN THE LABOUR COURT-II

GOVERNMENT OF GOA

AT PANAJI

**(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)**

Case No. Ref. LC-II/IT/08/10

Shri Shashikant Kunkolienkar,
r/o. Kinkolirem, Chokinwada,
Post-Mardol, Ponda-Goa. ... Workman/Party-I
V/s

M/s. Garware Goa Nets Ltd.,
Corlim Industrial Estate,
Corlim-Goa. ... Employer/Party-II

Workman/Party-I represented by Adv. Shri H. Shirodkar.

Employer/Party-II represented by Adv. Shri P. Chawdikar.

Panaji, Dated: 19-04-2017

AWARD

1. In Exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by Order dated 29-06-2010, bearing No. 28/27/2010-LAB, referred the following dispute for adjudication to the Industrial Tribunal of Goa. The Hon'ble Presiding Officer, Industrial Tribunal-cum-Labour Court in turn assigned the present dispute to this Labour Court-II, vide his order dated 16-08-2010.

"(1) Whether the action of M/s. Garware Goa Nets Limited, Corlim Industrial Estate, Corlim, Goa in refusing employment to Shri Shashikant Kunkoliekhar, Operator with effect from 22-09-2002, is legal and justified?

(2) If not, what relief, the Workman is entitled to?"

2. On receipt of the reference, a case was registered under No. IT/08/10 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed his Statement of Claim on 28-02-2011 at Exb-5. The facts of the case in brief as pleaded by the Workman are that he was initially appointed by the Employer (for short "Employer") as temporary worker w.e.f. 01-05-1982. He stated that he was confirmed in service w.e.f. 01-01-1983 as Asst. Operator/Helper. He stated that he was thereafter promoted to the post of Sr. Operator due to his untainted record. He stated that initially the Employer Company was functioning under the name and style as 'Sainet Private Limited' and now changed as "Garware Goa Nets Limited". He stated that on 22-09-2002, he reported on duty as usual, but the security personal posted on the gate of the Employer factory did not allow him to enter the factory premises. He stated that upon enquiry with the Employer, he was informed that his services are terminated with effect from 22-09-2002 and that he should not report for work henceforth. He stated that he was not given any letter of termination by the Employer. He submitted that he had sought an intervention of the Labour Commissioner, Government of Goa in the matter of his alleged illegal refusal of employment, which ended in failure due to adamant attitude of the Employer.

3. He contended that at the time of termination of his service, he was not given any reasons for refusal of work. He contended that the Employer has violated the mandatory provisions of Sec. 25-F, 25-G and 25H of the I.D. Act, 1947. He submitted that neither he was given nor offered any notice of termination or one month notice pay in lieu of notice before termination of his service. He submitted that neither seniority list was prepared nor the principles of last come first go was followed at the time of termination of his service. He submitted that the termination of his service by the Employer is an act of unfair labour practice. He submitted that the Employer Company deliberately fixed the enquiry at Mumbai knowing that he was not financially sound to appear before the Enquiry Officer at Mumbai. He submitted that the aforesaid act on the part of the Employer amounts to violation of principles of natural justice. He submitted that the enquiry conducted against him by the Enquiry Officer is bad-in-law. He submitted that the findings of the Enquiry Officer are perverse and illegal and as such termination of his service is illegal. He submitted that the Employer is in the habit of harassing the workers on one pretext or another. He submitted that his co-workers were also terminated from service on the same ground. He submitted that some of the workers settled the dispute and some of the workers have expired. He submitted that the action of the Employer in terminating his service without offering him any opportunity of being heard is against the principles of natural justice, biased and vindictive. He submitted that he is the only earning member in his family and his wife and three children are fully depending on him. He submitted that he is unemployed since the termination of his service. He therefore prayed that the Employer be directed to reinstate him back in their services with full back wages and other consequential reliefs.

4. The Employer disputed the claim of the Workman by filing its Written Statement on 27-06-2011 at Exhibit-7. The Employer, as and by way of preliminary objection, submitted that the reference is null and void as there does not exist an "Industrial Dispute" as defined u/s 2(k) of the I.D. Act, 1947 and that the reference has been made by the Government of Goa, without any material on record, in haste and without application of mind. The Employer admitted that the Workman was employed with them as an 'Operator' since the year 1982. The Employer also stated that the charge-sheet dated 10-07-2002 was issued to the Workman and he was informed that they have decided to

hold an enquiry against him in respect of the said charges. The Employer stated that it was also informed to the Workman that the enquiry would be conducted at Mumbai. The Employer stated that the Workman was informed in the charge-sheet issued to him that he would be reimbursed to and fro second class railway fare, from Goa to the venue of the enquiry as per his grade on the scheduled date of enquiry. The Employer stated that the Workman did not bother to respond the charge-sheet, nor did he bother to attend the enquiry. The Employer stated that thereafter another opportunity was given to him by adjourning the hearing. The Employer stated that the Workman still did not bother to attend the hearing. The Employer stated that an independent Enquiry Officer, Mr. K. Parmeshwaran was appointed as an Enquiry Officer to conduct an enquiry with respect to the said charge-sheet. The Employer stated that the enquiry was conducted in an impartial manner and every opportunity was given to the Workman to defend the charges leveled against him. The Employer stated that the Enquiry Officer conducted the enquiry ex-parte in the absence of the Workman, after giving him sufficient opportunities. The Employer stated that the Enquiry Officer submitted his findings dated 02-09-2002 after appreciating the facts of the case and held that the Workman is guilty of the charges leveled against him. The Employer stated that they have considered the proceedings of the enquiry, the findings of the Enquiry Officer dated 02-09-2002 and concurred with the same.

5. The Employer stated that all other workers duly settled their dispute before the Deputy Labour Commissioner by duly signing the settlement. The Employer stated that the Workman was adamant and as such his dispute could not be settled. The Employer stated that they considered the past record of the Workman. The Employer stated that they did not find any extenuating circumstances. The Employer stated that considering the gravity of the proved misconduct, they decided to dismiss the Workman from the service. The Employer stated that prior to dismissal of service of the Workman, he was given an opportunity to submit his representation in writing to the Enquiry Officer, within a span of five days. The Employer stated that in spite of this, the Workman did not respond. The Employer submitted that the Workman accepted his gratuity by duly signing the settlement before the Labour Commissioner. The Employer stated that the Workman never shown his insistence for his reinstatement during the said proceedings and in fact has willingly accepted

gratuity payment. The Employer submitted that reinstatement is nothing but a mere afterthought with malafide intention especially since after settlement before the Labour Commissioner, the Workman has accepted gratuity as a full and final settlement of his dues. The Employer submitted that the Workman was accordingly served with a dismissal letter dated 09-09-2002 dismissing him from service. The Employer submitted that its action in dismissing the Workman from service is legal, just and proper and therefore the Workman is not entitled to any relief as claimed.

6. The Employer stated that they have conducted the enquiry against the Workman in fair and proper manner. The Employer submitted that in the event, this Hon'ble Court set aside the enquiry on any of the ground, they may be permitted to lead a fresh evidence before this court to prove the charges. The Employer stated that in view of escalating and continuing losses, they closed the manufacturing operations of their unit located at plot No. 2, Corlim Industrial Estate on 16-06-2012 by informing G.I.D.C., Patto, Panaji-Goa, vide their letter dated 10-07-2012. The Employer stated that in view of closure, they have withdrawn their application for registration with Director of Industries, Trade and Commerce and as such there will be no registration certificate. The Employer stated that vide memorandum of settlement dated 14-06-2012, signed in the office of Commissioner of Labour, they retrenched all their sixty-three workmen on their roll. The Employer denied the overall case of the Workman as pleaded in his statement of claim and prayed for dismissal of the present reference issued by the Government of Goa.

7. Thereafter, the Workman filed his Re-joinder on 20-09-2011 at Exb.-10. The Workman, by way of his Re-joinder, confirms and reiterates all the submissions and averments made by him in his claim statement to be true and correct and denies all the statements and averments made by the Employer in the Written Statement, which are contrary to the statements and averments made by him. The Workman stated that he was appointed by the Employer as 'Asstt. Operator'/'Helper' w.e.f. 01-01-1983. He stated that he was promoted to the post of Operator/Sr. Helper with effect from 01-05-1986 vide letter dated 17-05-1986. He submitted that neither he was issued any show-cause notice nor issued any memo by the Employer before issuance of charge-sheet dated 10-07-2002. He submitted that he is a 'Workman' as defined u/s 2(s) of the I.D. Act, and this Hon'ble Court is having the jurisdiction to entertain and dispose off the present dispute. He submitted that

when the factory of the Employer was set up and running in Goa and that when the Workman was employed in Goa, fixing of the enquiry at Mumbai itself proves the malafidness on the part of the Employer. The Workman stated that he did not settle the dispute after accepting the gratuity. He stated that the gratuity was accepted because he was under huge financial crises.

8. Based on the pleadings of the respective Parties filed in the present proceedings, this Hon'ble Court framed following issues on 03-10-2011 at Exhibit-7.

1. Whether a free, fair & impartial inquiry has been conducted against the Workman/Party-I?
2. Whether the charges of misconduct leveled against the Workman/Party I vide charge-sheet dated 10-07-2002 have been proved to the satisfaction of this Court by acceptable evidence?
3. Whether the Workman/Party I proves that the action of the Employer/Party II in refusing employment to him w.e.f. 22-09-2002 is illegal and unjustified?
4. Whether the Workman/Party II proves that refusal of employment to him by the Employer/Party II is an act of unfair labour practice?
5. Whether the Employer/Party II proves that the present order of reference is bad-in-law in view of the preliminary objections raised by them in para (i) and para (ii) of their written statement?
6. Whether the Workman/Party I is entitled to any relief?
7. What Order? What Award?

9. My answers to the aforesaid issues are as under:

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|----------------------|-----------------------|
| (a) Issue No. 1 | : In the Negative. |
| (b) Issue No. 2 | : In the Negative. |
| (c) Issue No. 3 | : In the Affirmative. |
| (d) Issue No. 4 | : In the Affirmative. |
| (e) Issue No. 5 | : In the Negative. |
| (f) Issue Nos. 6 & 7 | : As per final order. |

REASONS

I have heard the oral arguments of Ld. Adv. Shri P. Chawdikar, appearing for the Employer. Ld. Adv. Shri H. Shirodkar remained absent at the time of final arguments.

10. Ld. Adv. Shri P. Chawdikar, representing the Employer during the course of his oral arguments, submitted that by order dated 21-01-2014, passed on the findings on the preliminary issue No. 1 and 2, this Hon'ble Court quashed and set aside the enquiry held against the Workman in respect of charge-sheet dated 10-07-2002 being unfair and improper. He submitted that the Employer therefore led additional evidence oral as well as documentary by examining its witnesses. He submitted that the oral as well as documentary evidence led by the Employer through its second witness Shri Ashok Patwardhan remained unchallenged for want of denial by the Workman. He submitted that the said oral as well as documentary evidence on record clearly indicates that the Workman had remained absent unauthorizedly for 85.5 days for the period from August, 2001 to April, 2002 as spelt out in the charge-sheet issued to him. He submitted that the said evidence on record clearly proves the misconduct of habitual absence without leave etc. as spelt out in the charge-sheet. He therefore submitted that the refusal of employment to the Workman is just, fair and legal and the Workman is therefore not entitled to any relief. Without prejudice to his aforesaid submission, he submitted that the Employer has produced on record oral as well as documentary evidence pertaining to the closure of its factory w.e.f. 16-06-2012. He submitted that the Employer also produced on record a memorandum of settlement dated 14-06-2012 signed with its employees union and a compact disc showing the gainful employment of the Workman.

I have carefully perused the entire records of the present case. I have also carefully considered the oral submissions advanced by Ld. Adv. Shri P. Chawdikar appearing for the Employer.

11. *Issue Nos. 1 and 2:*

Vide order dated 21-01-2014, passed in my finding on the preliminary issue No. 1 and 2, I have come to the conclusion and held that no fair and proper enquiry has been conducted against the Workman in respect of the charge-sheet dated 10-07-2002 and that the enquiry conducted against the Workman is quashed and set aside.

12. *Issue No. 3:*

As the enquiry was quashed and set aside, the Employer chose to lead additional evidence on the floor of this court by examining two witnesses to prove the charges of misconduct as spelt out in the charge-sheet dated 10-07-2002, issued to the Workman.

The first witness of the Workman, Shri Anant G. Devlekar in his affidavit in evidence on record, deposed that he is working with the Employer as Administrative Manager, handling day to day working of administrative department such as salary, leave records, attendance etc. of workmen of the Employer Company. The said witness in para 9 of his affidavit-in-evidence deposed that the Workman remained absent from August, 2001 to April, 2002 for total 85.5 days (being August, 2001-11 days, September, 2001-9.5 days, October, 2001-7 days, November, 2001-10 days, December, 2001-8.5 days, January, 2002-5.5 days, March, 2002-15 days and April, 2002-19 days) and also produced on record copies of extract of muster roll for the period starting from August, 2001 to April, 2002 (Exb. 29-colly). He deposed that in spite of repeated warnings, caution etc., the Workman did not improve in his attendance and deliberately remained absent from work. He deposed that the Workman frequently remained absent unauthorizedly without any satisfactory explanation and without any proper justification.

13. He was cross-examined by Ld. Adv. Shri H. Shirodkar appearing for the Workman. In his cross-examination, Shri Devlekar admitted that in his earlier affidavit-in-evidence filed in the present proceedings, he has deposed that he is presently designated as consultant. He deposed that in the present affidavit in evidence, he deposed that he is working with the Employer as Administrative Manager. The witness further deposed that he was Administrative Manager prior to the year 2013. The witness finally admitted that presently, he is not working as Administrative Manager with the Employer Company and that his statement made in para 1 of his affidavit in evidence is incorrect statement. He admitted that in the year 2001, he was not posted in any of the branch of the Employer in Goa and that one Mr. Desai was posted at Goa branch of the Employer as its Manager in the year 2001 and 2002, however, he do not remember his first name. He deposed that he do not remember the name of the person as well as his designation, who had entrusted with the work of maintaining the muster roll in the year 2001 and 2002 by the Employer at its Corlim branch. He deposed that he do not identify the hand-writing appearing on the muster roll at Exb. 29-colly. He deposed that apart from the muster roll, the Employer do not have any other records pertaining to the attendance of the Workman. He deposed that he do not recollect as to whether the Employer used to obtain the signature of its workers or maintaining punching card system to mark the attendance of its workers.

He admitted that the contents of para 9 of his affidavit in evidence do not match with the muster roll at Exb. 29-colly. He deposed that the aforesaid mistake has been made by the clerk appointed by the Employer, however, he do not know his name. He deposed that at the time of preparing the charge-sheet, he had not seen the muster roll maintained by the Employer, wherein the attendance of the Workman has been marked. He deposed that he do not remember as to who had prepared the said charge-sheet against the Workman. He admitted that in his earlier cross-examination in the present matter, he has deposed that sometimes the Workman used to remain absent on medical grounds and subsequently, he used to submit the medical certificate. He admitted that there was delay in payment of wages to the workers of the Employer at the relevant time i.e. from August, 2001 to April, 2002. He deposed that the Workman used to travel from his native place to the factory of the Employer to report for his duties, which is around 10 kms. away from the factory of the Employer. He deposed that he do not know as to whether due to delay in payment of wages of the Workman, he used to find difficult to travel by bus from his place of residence to the factory of the Employer. He admitted that because of delay in payment of wages of the workers, there was consequential delay in payment of ESI contribution of the workers. He deposed that he do not know as to whether because of unavailability of ESI facility, the Workman was compelled to approach the private doctor for medical treatment of himself as well as of his family members at the relevant time. He deposed that delay in payment of wages affected the attendance of the Workman. He deposed that he is not aware as to whether whenever the Workman used to remain absent, he used to intimate to the management of the Employer about his absenteeism either by telephonically or otherwise. He deposed that he do not know as to whether the Workman used to remain absent hardly for one or two days in a month and that contents of para 9 of his affidavit in evidence is false.

14. Thus, the aforesaid oral as well as documentary evidence led by the Employer through its witness Shri Anant Devlekar is full of contradictions. The testimony of the said first witness of the Employer Shri Devlekar has been shaken and as such could not be believed.

15. After completion of the cross-examination of the first witness of the Employer Shri Anant Devlekar, the Employer closed its evidence. Thereafter, the Workman filed his affidavit in evidence in rebuttal. However, after

filing of the said affidavit in evidence, neither the Workman, nor Adv. H. Shirodkar appearing for the Workman, remained present on the scheduled date of hearings and as such this court was constraint to close the evidence of the Workman, after giving him ample opportunities and case was adjourned for final arguments. Thereafter, the Employer filed an application for production of additional documents, which was allowed by order of this court dated 08-11-2016.

16. The Employer examined it's another witness namely Shri Ashok Patwardhan by filing his affidavit in evidence and also produced on record certain documents. The said oral as documentary evidence adduced by the Employer through its witness Shri Ashok Patwardhan remained unchallenged for its want of denial. The said affidavit in evidence of the Employer's witness, Shri Ashok Patwardhan has been filed after closure of its evidence and without seeking any prior permission, in the garb of production of documents, namely compact disc (Exb. 38), copy of letter of the Employer dated 10-07-2012 (Exb. 39) and copy of memorandum of settlement dated 14-06-2012 (Exb. 40). The contents of affidavit-in-evidence of both the witnesses of the Employer are more or less same. Moresoever, Shri Patwardhan, in para 6 of his affidavit-in-evidence deposed 85.5 days of unauthorized absence of the Workman by giving month wise absenteeism, similar to the deposition of para 9 of the first witness of the Employer, Shri Devlekar. The said para 6 of affidavit-in-evidence of the said witness of the Employer do not match with the copies of extract of muster roll on record at Exb. 29-colly and as such differs from each other. Hence, I am not inclined to give any weightage to the oral evidence of the second witness of the Employer, Shri Ashok Patwardhan.

17. On the contrary, the evidence on record indicates that the Workman was in the employment of the Employer continuously from the year 1982 till he was dismissed from service w.e.f. 22-09-2002. The Workman was also given promotion to the post of Operator from the post of 'Asstt. Operator'/'Helper'. The Employer also failed to produce on record any memo, show-cause notices, warning letters, charge-sheets etc. issued to the Workman in the past in his long term service with them. The first witness of the Employer Shri Patwardhan admitted that at the relevant time, there was delay in payment of wages to the workers. The said witness of the Employer also admitted that the Workman used to remain absent on medical ground and subsequently, he used to submit the medical certificate. In view of above, it

is held that the Employer also failed to prove any of the charges of misconduct as spelt out in the charge-sheet dated 10-07-2002, issued to the Workman, either by holding a fair and proper enquiry in accordance with principles of natural justice or also on the floor of this court. In the absence of any proved misconduct on the part of the Workman, it is held that the action of the Employer in refusing employment to the Workman w.e.f. 22-09-2002 is illegal and unjustified. The issue No. 3 is therefore answered in the affirmative.

18. Issue No. 4:

The Workman, in his statement of claim filed in the present proceedings, alleged that his termination of service is an act of unfair labour practice on the part of the Employer. The term 'unfair labour practice' has been stated in fifth schedule of the Industrial Disputes Act, 1947 and it means:

1. On the part of employers and trade union of employer's.

- 1
- 2
- 3
- 4

5. To discharge or dismiss workmen-

- (a) By way of victimization;
- (b) Not in good faith, but in the colourable exercise of the employers right;
- (c) By falsely implicating a workman in a criminal case on false evidence or on concocted evidence;
- (d) For patently false reasons;
- (e) On untrue or trumped up allegation of absence without leave;
- (f) In utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste.

19. In the instant case, admittedly, the Workman was in the employment of the Employer continuously from the year 1982 till he was dismissed from service w.e.f. 22-09-2002. The factory of the Employer is located at Corlim, Goa and the Workman is native of and residing at Kunkoliem, Mardol, Goa. However, a domestic enquiry was conducted at its corporate office located at Chandermukhi, Nariman Point, Mumbai, which is at around 600 km. away from the factory of the Employer. The evidence on record indicates that the Workman was only conveyed that he would be

reimbursed to and fro second class railway fare from Goa to the venue of the enquiry as per his grade on the scheduled date of hearing. The evidence on record indicates that no provision/arrangements were made to bear the additional travelling and miscellaneous expenses towards food and accommodation and to take his Defense Representative to the venue of the enquiry at Mumbai, though the Workman informed the Employer about his inability to attend the enquiry at Mumbai along with his Defense Representative as he was not paid his salaries for the last several months and requested to fix the enquiry in Goa. The evidence on record indicates that the enquiry was conducted against the Workman in utter violation of the principles of natural justice.

20. The aforesaid evidence on record clearly proves that the Workman was dismissed from service on false allegation of absence without leave and in colourable exercise of the right of the employer in utter disregard of the principles of natural justice in the conduct of domestic enquiry. It is therefore held that the Workman proved that the refusal of employment to the Workman by the Employer amounts to an unfair labour practice as stated in the fifth schedule of Industrial Disputes Act, 1947. The issue No. 4 is therefore answered in the affirmative.

21. Issue No. 5:

The Employer, as and by way of its preliminary objections, filed in the written statement, submitted that the reference is null and void as there is no industrial dispute exists as defined u/s 2 (k) of the I.D. Act, 1947 and that the reference has been made by the Government of Goa, without any material on record, in haste and without application of mind. The burden to prove the aforesaid issue is therefore on the Employer. The Employer has however, failed to bring on record any material evidence in support of the aforesaid issue. Even otherwise, in the case in hand, it is not in dispute that the Party I is a 'workman' within the meaning of Section 2(s) of the I. D. Act, 1947. It is also not in dispute that the Party II Company is an 'Employer' within the meaning of Section 2(j) of the I. D. Act, 1947. Hence, the present dispute raised by the workman against the Employer pertaining to his non-employment is an 'industrial dispute' within the meaning of Section 2(k) of the I.D. Act, 1947 and as such this court has every jurisdiction to adjudicate the present reference. Consequently, the Employer failed to prove its allegations that the reference is bad-in-law for any reasons as there is no industrial dispute exists as defined u/s 2 (k) of the I. D. Act,

1947 and that the reference has been made by the Government of Goa without any material on record, in haste and without application of mind. The issue No. 5 is therefore answered in the negative.

22. Issue No. 6:

While deciding the issue No. 3 hereinabove, I have discussed and came to the conclusion that the action of the Employer in refusing employment to the Workman w.e.f. 22-09-2002 is illegal and unjustified. The evidence on record indicates that the Workman was initially appointed as Trainee w.e.f. 01-05-1982. After successful completion of training period, he was appointed as Asstt. Operator/Helper w.e.f. 01-01-1983 by the Employer, vide its order dated 01-01-1983 (Exb. 15). The Workman was subsequently promoted to the post of 'Operator'. The evidence on record indicates that the Workman was in continuous employment with the Employer from its initial appointment w.e.f. 01-05-1982 till he was dismissed from service w.e.f. 22-09-2002. The evidence on record indicates that the age of the Workman under reference as on 15-11-2011 was 44 years. The evidence on record indicates that the Employer has permanently closed its Corlim unit w.e.f. 16-06-2012 due to unavoidable and unforeseen circumstances and withdrawn its application for registration with the Director of Industries, Trade and Commerce, vide its letter dated 10-07-2012 (Exb. 39). The Workman is therefore not entitled for any reinstatement in service of the Employer.

23. In the case of **Deepali Gundu Surwase v/s. Kranti Junior Adhyapak Mahavidyalaya (D. ED.) and Ors., reported in (2013) 10 SCC 324**, the Hon'ble Apex Court has held that if the order of termination is void ab initio, the Workman is entitled to full back wages. The relevant para of the decision is extracted hereunder:

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance.

The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

24. The principle laid down by the Hon'ble Apex Court is well recognized and is also applicable to the case in hand. In the case in hand, the Workman was in the employment of the Employer continuously w.e.f. 01-05-1982 till he was illegally dismissed from service w.e.f. 22-09-2002. The Workman pleaded that he is the only earning hand in his family, having dependent on him, his wife and three children and that he is unemployed from the date of his termination till date. The evidence on record indicates that the Employer failed to state on oath that the Workman is gainfully employed from the date of his dismissal till date, though pleaded in its written statement. The Employer has however, produced on record a compact disc (Exb. 38), to prove gainful employment of the Workman. Upon careful perusal of the said compact disc at Exb. 38, it is noticed a small house adjacent to the aracanut garden. However, the Employer has failed to produce on record any corroborative evidence or any other details pertaining to the gainful employment of the Workman, since the date of his illegal termination. Hence, it is held that the Employer failed to prove that the Workman is gainfully employed from the date of his termination till date. The Workman is therefore entitled for full back wages from the date of his termination of services

till the permanent closure of the unit of the Employer w.e.f. 16-06-2012. The Workman is also entitled to the benefits of the memorandum of settlement dated 14-06-2012 signed between the management of the Employer and their workmen represented by Goa Trade and Commercial Workers' Union before the Commissioner, Labour and Employment, Panaji-Goa, u/s 12 (3) of the I. D. Act, 1947 (Exb. 40).

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the action M/s. Garware Goa Nets Limited, Corlim Industrial Estate, Corlim, Goa in refusing employment to Shri Shashikant Kunkoliekar, Operator with effect from 22-09-2002, is illegal and unjustified.
2. The workman, Shri Shashikant Kunkoliekar is therefore entitled for full back wages from the date of his termination of services w.e.f. 22-09-2002 till the permanent closure of the unit of the Employer w.e.f. 16-06-2012. The Workman is also entitled to the benefits of the memorandum of settlement dated 14-06-2012 signed between the management of the Employer and their workmen represented by Goa Trade and Commercial Workers' Union before the Commissioner, Labour and Employment, Panaji-Goa, u/s 12 (3) of the I.D. Act, 1947.
3. No order as to costs.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Notification

No. 28/9/2017-LAB/Part-I/387

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 27-04-2017 in reference No. IT/38/01 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Shaila G. Bhosle, Under Secretary (Labour).

Porvorim, 24th May, 2017.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT

GOVERNMENT OF GOA

AT PANAJI

(Before Mr. Vincent D'Silva, Hon'ble Presiding Officer)

Ref. No. IT/38/01

Workmen,
Rep. by the President,
Goa Trade & Commercial
Workers' Union,
Velho's Building, 2nd Floor,
Panaji-Goa. ... Workmen/Party I

V/s

Shri Lawrence Fernandes,
M/s. Trinity Enterprises,
Aradi, Guirim, Bardez-Goa. ... Employer/Party II

Workmen/Party I represented by Ld. Adv.
Shri Suhaas Naik.

Employer/Party II represented by Ld. Adv. Shri M.
S. Bandodkar.

AWARD

(Delivered on this the 27th day of the month
of April of the year 2017)

By Order dated 6-6-2001 bearing No. IRM/CON/ (122)/2000/2451, the Government of Goa in exercise of powers conferred by Section 10(1)(d) of the Industrial Disputes Act, 1947 (for short The Act), has referred the following dispute to this Tribunal for adjudication.

"(1) Whether the action of the management of M/s. Trinity Enterprises, Aradi, Guirim, Bardez, Goa, Contractor of M/s. Okasa Ltd., in terminating the services of the following workmen working as packers, is legal and justified?

1. Leena Naik.
2. Milan Naik.
3. Parvati Naik.
4. Sunanda S. Verekar.
5. Manisha Naik.
6. Rajani Gaude.
7. Jyotsna Marcelkar.
8. Milan T. Naik.
9. Manda Naik.
10. Hema Naik.
11. Pramila Gaunkar.
12. Ashok Gaonkar.
13. Gokuldas Naik.

14. Anthony Vales.
15. Sushma Naik.
16. Beshaj Naik.
17. Shamal Naik.
18. Lalita Naik.
19. Nilima Gaude.
20. Nilima Naik.
21. Sumati Naik.
22. Nalu Gaunkar.
23. Supriya Gaonkar.
24. Shakuntala Gaonkar.
25. Rajendra Palkar.
26. Sunil Naik.
27. Vaishali Mangueshkar.
28. Ajita Parab.

- (2) If not, to what relief the above workmen are entitled?"

2. Upon receipt of the reference, it was registered as IT/38/01 and registered A/D notices were issued to both the parties. Pursuant to service of notices, Party I filed a Claim statement at Exbt. 4 and Party II filed a written statement at Exbt. 5.

3. In short, the case of Party I is that about 79 workers were recruited by the management of M/s. Osaka Limited, Medispray Pvt. Ltd. and M/s. Meditab Specialties Pvt. Ltd. and all the said workers were inter-rotated on the rolls of three companies and subsequently they were transferred on the rolls of contractor, namely Shri Lawrence Fernandes who is running the contract in the name of M/s. Sheryl & Company, M/s. Trevor Enterprises and M/s. Trinity Enterprises. The Party I workmen were put on the rolls of M/s. Trinity Enterprises and were employed at M/s. Osaka Ltd. The Principal Employer and the Contractor were paying the workers less salary; however they were made to work in most inhumane working conditions. The said workers thereafter unionized themselves under the banner of Goa Trade & Commercial Workers' Union and requested to treat the workmen as 'Protected Workmen'. However, the Party II started harassing and victimizing the workers and forced them to leave the Union and since they refused to resign from the Union, all the workmen refused employment w.e.f. 23-11-1998. The refusal of employment is illegal and bad-in-law as no enquiry of whatsoever nature has been conducted. The Party I had worked efficiently and diligently with clean and unblemished past service record. Hence, the dispute.

4. In the Written statement, the Party II has claimed that their activities have been closed after the strike resorted to by the workers engaged for services and all the workmen were offered their

legal dues arising out of the closure. The services of the workmen were terminated since the factory is already closed and all the workers were paid their dues.

5. In the rejoinder at Exbt. 6, the Party I denied the case put forth by Party II in Written statement.

6. Issues came to be framed at Exbt. 7. They are:

- 1) Whether the Workmen/Party I proves that the Employer/Party II refused employment to them from 23-11-1998?
- 2) Whether the Workmen/Party I proves that refusal of employment to them by the Employer/Party II w.e.f. 23-11-98 is illegal and unjustified?
- 3) Whether the Employer/Party II proves that the reference made by the Government is bad in law and not maintainable?
- 4) Whether the Employer/Party II proves that its establishment is permanently closed from 25-11-98 and the services of the Workmen/Party I were terminated?
- 5) Whether the Workmen/Party I entitled to any relief?
- 6) What Order?

7. In the course of further proceedings, the parties arrived at an amicable settlement and filed consent terms along with Annexure 'A' at Exhibit 31 colly, and prayed to dispose of reference in terms of the settlement.

8. The consent terms read as follows:

- a) It is agreed between the parties that each workmen concerned in the reference as per Annexure A to the settlement shall be paid a sum of Rs. 25,000.00 (Rupees Twenty five thousand only) in full and final settlement of their dispute arising out of their employment and reference which includes earned wages, retrenchment compensation, unpaid salary, gratuity, bonus, ex-gratia, if any etc.
- b) It is agreed specifically by workmen and the union that the amount of money mentioned in Clause No. 1 in full and final settlement of claim of each workmen arising out of their employment and reference and the amount mentioned in Clause No. 1 includes earned wages, retrenchment compensation, unpaid salary, gratuity, bonus, ex-gratia, if any etc. and it shall also include any benefit which can be computed in terms of money and this settlement is in full and final satisfaction of all claims of workmen including any claims of re-instatement or re-employment.

- c) It is agreed by each individual workman that out of Rs. 25,000.00 paid/payable to them as per the settlement, a sum of Rs. 2500.00 shall be paid to the Goa Trade & Commercial Workers Union by cheque from the said amount from each individual workman.
- d) It is agreed by the Party I that Party II shall draw a cheque in the name of the workman concerned in the reference for a sum of Rs. 25,000.00 (Rupees Twenty five thousand only) each and will be handed over to the representative of Goa Trade and Commercial Workers Union along with the receipt and Annexure A and it would be responsibility of the representative of Union to disburse the said cheque to said workman concerned in the reference and give receipt to the management within period of 15 days from acceptance of cheque.

9. The above Consent terms are signed by Shri Lawrence Fernandes and Ld. Adv. Shri M. S. Bandodkar of Party II, so also Shri Christopher Fonseca-President of Goa Trade & Commercial Workers Union and Ld. Adv. Shri Suhaas Naik, representing the Party I Workmen. I have gone through the records of the case and the above consent terms and I am convinced that the consent terms filed by the parties are just and fair and are in the interest of the Workmen/Party I and Employer/Party II and therefore, the same are accepted.

10. In view of above, I pass the following:

ORDER

- 1) The reference stands disposed of in view of the consent terms filed by the parties at Exhibit 31 colly.
- 2) No order as to costs.
- 3) Inform the Government accordingly.

Sd/-
(Vincent D'Silva),
Presiding Officer,
Industrial Tribunal and
Labour Court.

Notification

No. 28/9/2017-LAB/Part-I/382

The following award passed by the Labour Court-II, at Panaji-Goa on 19-04-2017 in reference No. LC-II/IT/6/10 is hereby published as required

by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of
Goa.

Shaila G. Bhosle, Under Secretary (Labour).

Porvorim, 24th May, 2017.

IN THE LABOUR COURT-II

GOVERNMENT OF GOA

AT PANAJI

(Before **Shri Suresh N. Narulkar**, Hon'ble
Presiding Officer)

Case No. Ref. LC-II/IT/6/10

Shri Anand Kunkolienkar,
Kunkolim, Godkirwada,
Mardol, Ponda-Goa.

... Workman/Party I

V/s

M/s Garware Goa Nets Ltd.,
Corlim Industrial Estate,
Corlim-Goa.

... Employer/Party II

Workman/Party-I represented by Adv. Shri H. Shirodkar.

Employer/Party-II represented by Adv. Shri P. Chawdikar.

Panaji, Dated: 19-04-2017

AWARD

1. In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by Order dated 29-06-2010, bearing No. 28/28/2010-LAB, referred the following dispute for adjudication to the Industrial Tribunal of Goa. The Hon'ble Presiding Officer, Industrial Tribunal-cum-Labour Court in turn assigned the present dispute to this Labour Court-II, vide his order dated 16-08-2010.

"(1) Whether the action of M/s Garware Goa Nets Limited, Corlim Industrial Estate, Corlim, Goa in refusing employment to Shri Anand Kunkolienkar, Operator with effect from 21-09-2002, is legal and justified?

(2) If not, what relief the Workman is entitled to?"

2. On receipt of the reference, a case was registered under No. IT/06/10 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance.

The Workman/Party-I (for short 'Workman'), filed his Statement of Claim on 28-02-2011 at Exb-5. The facts of the case in brief as pleaded by the Workman are that he was employed as an "Operator" at the factory of the Employer/Party-II (for short "Employer") since the year 1982. He stated that he was initially appointed as temporary worker on 01-08-1982. He stated that thereafter his service was confirmed and he was working as Operator. He stated that initially the Employer Company was functioning under the name and style as 'Sainet Private Limited' and now changed as "Garware Goa Nets Limited". He stated that on 21-09-2002, he reported on duty as usual, but the security personal posted on the gate of the Employer factory did not allow him to enter the factory premises. He stated that upon enquiry with the Employer, he was informed that his services are terminated with effect from 21-09-2002 and that he should not report for work hence forth. He stated that he was not given any letter of termination by the Employer. He submitted that he had sought an intervention of the Labour Commissioner, Government of Goa, in the matter of his alleged illegal refusal of employment, which ended in failure, due to adamant attitude of the Employer.

3. He contended that at the time of termination of his service, he was not given any reasons for refusal of work. He contended that the Employer has violated the mandatory provisions of Sec. 25-F, 25-G and 25H of the I.D. Act, 1947. He submitted that neither he was given nor offered any notice of termination or one month notice pay in lieu of notice before termination of his service. He submitted that neither seniority list was prepared nor the principles of last come first go was followed at the time of termination of his service. He submitted that the termination of his service by the Employer is an act of unfair labour practice. He submitted that the Employer Company deliberately fixed the enquiry at Mumbai knowing that the Workman was not financially sound to appear before the Enquiry Officer at Mumbai. He submitted that the aforesaid act on the part of the Employer amounts to violation of principles of natural justice. He submitted that the enquiry conducted against him by the Enquiry Officer is bad-in-law. He submitted that the findings of the Enquiry Officer are perverse and illegal and as such termination of his service is illegal. He submitted that the Employer is in the habit of harassing the workers on one pretext or another. He submitted that his co-workers were also terminated from service on the same ground. He submitted that some of the workers settled the

dispute and some of the workers have expired. He submitted that the action of the Employer in terminating his service without offering him any opportunity of being heard is against the principles of natural justice, biased and vindictive. He submitted that he is the only earning member in his family and his wife and three children are fully depending on him. He submitted that he is unemployed since the termination of his service. He therefore prayed that the Employer be directed to reinstate him back in their services with full back wages and other consequential reliefs.

4. The Employer disputed the claim of the Workman by filing its Written Statement on 27-06-2011 at Exhibit-7. The Employer, by way of preliminary objection, submitted that the reference is null and void as there does not exist an "Industrial Dispute" as defined u/s 2(k) of the I.D. Act, 1947 and that the reference has been made by the Government of Goa, without any material on record, in haste and without application of mind. The Employer admitted that the Workman was employed with them as an 'Operator' since the year 1982. The Employer also stated that the charge-sheet dated 10-07-2002 was issued to the Workman and he was informed that they have decided to hold an enquiry against him in respect of the said charges. The Employer stated that it was also informed to the Workman that the enquiry would be conducted at Mumbai. The Employer stated that the Workman was informed in the charge-sheet issued to him that he would be reimbursed to and fro second class railway fare from Goa to the venue of the enquiry as per his grade on the scheduled date of enquiry. The Employer stated that the Workman did not bother to respond the charge-sheet, nor did he bother to attend the enquiry. The Employer stated that thereafter another opportunity was given to him by adjourning the hearing. The Employer stated that the Workman still did not bother to attend the hearing. The Employer stated that an independent Enquiry Officer, Mr. K. Parmeshwaran was appointed as an Enquiry Officer to conduct an enquiry with respect to the said charge-sheet. The Employer stated that the enquiry was conducted in an impartial manner and every opportunity was given to the Workman to defend the charges leveled against him. The Employer stated that the Enquiry Officer conducted the enquiry ex-parte in the absence of the Workman, after giving him sufficient opportunities. The Employer stated that the Enquiry Officer submitted his findings dated 28-08-2002, after appreciating the facts of the case and held that the Workman is guilty of the charges leveled

against him. The Employer stated that they have considered the proceedings of the enquiry, the findings of the Enquiry Officer dated 28-08-2002 and concurred with the same.

5. The Employer stated that all other workers duly settled their dispute before the Deputy Labour Commissioner by duly signing the settlement. The Employer stated that the Workman was adamant and as such his dispute could not be settled. The Employer stated that they considered the past record of the Workman. The Employer stated that they did not find any extenuating circumstances. The Employer stated that considering the gravity of the proved misconduct, they decided to dismiss the Workman from the service. The Employer stated that prior to dismissal of service of the Workman, he was given an opportunity to submit his representation in writing to the Enquiry Officer within a span of five days. The Employer stated that inspite of this, the Workman did not respond. The Employer submitted that the Workman accepted his gratuity by duly signing the settlement before the Labour Commissioner. The Employer stated that the Workman never shown his insistence for his reinstatement during the said proceedings and in fact, has willingly accepted gratuity payment. The Employer submitted that reinstatement is nothing but a mere afterthought, with malafide intention, especially since after settlement before the Labour Commissioner, the Workman has accepted gratuity as a full and final settlement of his dues. The Employer submitted that the Workman was accordingly served with a dismissal letter dated 6-9-2002 dismissing him from service. The Employer submitted that its action in dismissing the Workman from service is legal, just and proper and therefore the Workman is not entitled to any relief as claimed.

6. The Employer submitted that they have conducted the enquiry against the Workman in fair and proper manner. The Employer submitted that in the event, this Hon'ble Court set aside the enquiry on any of the ground, they may be permitted to lead a fresh evidence before this court to prove the charges. The Employer stated that in view of escalating and continuing losses, they closed the manufacturing operations of their unit located at plot No. 2, Corlim Industrial Estate on 16-06-2012 by informing G.I.D.C., Patto, Panaji-Goa, vide their letter dated 10-07-2012. The Employer stated that in view of closure, they have withdrawn their application for registration with Director of Industries, Trade and Commerce and as such there will be no registration certificate. The Employer stated that vide memorandum of settlement dated

14-06-2012, signed in the office of Commissioner of Labour, they retrenched all their sixty-three workmen on their roll. The Employer denied the overall case of the Party-I as pleaded in his statement of claim and prayed for dismissal of the present reference issued by the Government of Goa.

7. Thereafter, the Workman filed his Re-joinder on 20-09-2011 at Exb.- 10. The Workman, by way of his Re-joinder, confirms and reiterates all the submissions and averments made by him in his claim statement to be true and correct and denies all the statements and averments made by the Employer in the Written Statement which are contrary to the statements and averments made by him. The Workman stated that he was appointed as 'Asstt. Operator'/'Helper' with effect from 01-08-1983 in its factory located at Corlim Industrial Estate, Corlim-Goa, after successful completion of his training on 30-09-1982. He stated that he was promoted to the post of Operator/Sr. Helper with effect from 01-05-1986 vide letter dated 17-05-1986. He submitted that neither he was issued any show-cause notice nor issued any memo by the Employer before issuance of charge-sheet dated 10-07-2002. He submitted that he is a 'Workman' as defined u/s 2(s) of the I.D. Act, and this Hon'ble Court is having the jurisdiction to entertain and dispose off the present dispute. He submitted that when the factory of the Employer is set up and running in Goa and the Workman was employed in Goa, the fixing of the enquiry at Mumbai itself proves the malafidness on the part of the Employer. The Workman stated that he did not settle the dispute after accepting the gratuity. He stated that the gratuity was accepted because he was under huge financial crises.

8. Based on the pleadings of the respective Parties filed in the present proceedings, this Hon'ble Court framed following issues on 03-10-2011 at Exhibit-7.

1. Whether a free, fair & impartial inquiry has been conducted against the Workman/ /Party-I?
2. Whether the charges of misconduct leveled against the Workman/Party I vide charge-sheet dated 10-07-2002 have been proved to the satisfaction of this Court by acceptable evidence?
3. Whether the Workman/Party I proves that the action of the Employer/Party II in refusing employment to him w.e.f. 21-09-2002 is illegal and unjustified?

4. Whether the Workman/Party II proves that refusal of employment to him by the Employer/Party II is an act of unfair labour practice?
5. Whether the Employer/Party II proves that the present order of reference is bad-in-law in view of the preliminary objections raised by them in para (i) and para (ii) of their written statement?
6. Whether the Workman/Party I is entitled to any relief?
7. What Order? What Award?

9. My answers to the aforesaid issues are as under:

- (a) Issue No. 1 : In the Negative.
- (b) Issue No. 2 : In the Negative.
- (c) Issue No. 3 : In the Affirmative.
- (d) Issue No. 4 : In the Affirmative.
- (e) Issue No. 5 : In the Negative.
- (f) Issue Nos. 6 & 7 : As per final order.

REASONS:

I have heard the oral arguments of Ld. Adv. Shri P. Chawdikar, appearing for the Employer. Ld. Adv. Shri H. Shirodkar remained absent at the time of final arguments.

10. Ld. Adv. Shri P. Chawdikar, representing the Employer, during the course of his oral arguments, submitted that by order dated 21-01-2014, passed on the findings on the preliminary issue No. 1 and 2, this Hon'ble Court quashed and set aside the enquiry held against the Workman in respect of charge-sheet dated 10-07-2002 being unfair and improper. He submitted that the Employer therefore led additional evidence oral as well as documentary by examining its witnesses. He submitted that the oral as well as documentary evidence led by the Employer through its second witness Shri Ashok Patwardhan remained unchallenged for want of denial by the Workman. He submitted that the said oral as well as documentary evidence on record clearly indicates that the Workman had remained absent unauthorizedly for 35 days for the period from August, 2001 to March, 2002 as spelt out in the charge-sheet issued to him. He submitted that the said evidence on record clearly proves the misconduct of habitual absence without leave etc. as spelt out in the charge-sheet. He therefore submitted that the refusal of employment to the Workman is just, fair and legal and the Workman is therefore not entitled to any relief. Without prejudice to his aforesaid submission, he submitted

that the Employer has produced on record oral as well as documentary evidence pertaining to the closure of its factory w.e.f. 16-06-2012. He submitted that the Employer also produced on record a memorandum of settlement dated 14-06-2012 signed with its employees union and a compact disc showing the gainful employment of the Workman.

I have carefully perused the entire records of the present case. I have also carefully considered the oral submissions advanced by Ld. Adv. Shri P. Chawdikar appearing for the Employer.

11. Issue Nos. 1 and 2:

Vide order dated 21-01-2014, passed in my finding on the preliminary issue Nos. 1 and 2, I have come to the conclusion and held that no fair and proper enquiry has been conducted against the Workman in respect of the charge-sheet dated 10-07-2002 and that the enquiry conducted against the Workman is quashed and set aside.

12. Issue No. 3:

As the enquiry was quashed and set aside, the Employer chose to lead additional evidence on the floor of this court by examining two witnesses to prove the charges of misconduct as spelt out in the charge-sheet dated 10-07-2002, issued to the Workman.

The first witness of the Workman, Shri Anant G. Devlekar in his affidavit in evidence on record, deposed that he is working with the Employer as Administrative Manager, handling day today working of administrative department such as salary, leave records, attendance etc. of workmen of the Employer Company. The said witness in para 9 of his affidavit-in-evidence deposed that the Workman remained absent from August, 2001 to March, 2002 for total 35 days (being August, 2001-5days, September, 2001-8 days, October, 2001-7 days, November, 2001-8 days and March, 2002-7 days) and also produced on record copies of extract of muster roll for the period starting from August, 2001 to March, 2002 (Exb. 21-colly). He deposed that in spite of repeated warnings, caution etc., the Workman did not improve in his attendance and deliberately remained absent from work. He deposed that the Workman frequently remained absent unauthorizedly without any satisfactory explanation and without any proper justification.

13. He was cross-examined by Ld. Adv. Shri H. Shirodkar appearing for the Workman. In his cross-examination, Shri Devlekar admitted that in his earlier affidavit-in-evidence filed in the present

proceedings, he has deposed that he is presently designated as consultant. He deposed that in the present affidavit in evidence, he deposed that he is working with the Employer as Administrative Manager. The witness further deposed that he was Administrative Manager prior to the year 2013. The witness finally admitted that presently, he is not working as Administrative Manager with the Employer Company and that his statement made in para 1 of his affidavit in evidence is incorrect statement. He admitted that in the year 2001, he was not posted in any of the branch of the Employer in Goa and that one Mr. Desai was posted at Goa branch of the Employer as its Manager in the year 2001 and 2002, however, he do not remember his first name. He deposed that he do not remember the name of the person as well as his designation, who was entrusted with the work of maintaining the muster roll in the year 2001 and 2002 by the Employer at its Corlim branch. He deposed that he do not identify the hand-writing appearing on the muster roll at Exb. 21-colly. He deposed that apart from the muster roll, the Employer do not have any other records pertaining to the attendance of the Workman. He deposed that he do not recollect as to whether the Employer used to obtain the signature of its workers or maintaining punching card system to mark the attendance of its workers. He admitted that the contents of para 9 of his affidavit in evidence do not match with the muster roll at Exb. 21-colly. He deposed that the aforesaid mistake has been made by the clerk appointed by the Employer, however, he do not know his name. He deposed that at the time of preparing the charge-sheet, he had not seen the muster roll maintained by the Employer, wherein the attendance of the Workman has been marked. He deposed that he do not remember as to who had prepared the said charge-sheet against the Workman. He admitted that in his earlier cross-examination in the present matter, he has deposed that sometimes the Workman used to remain absent on medical grounds and subsequently, he used to submit the medical certificate. He admitted that there was delay in payment of wages to the workers of the Employer at the relevant time i.e. from August, 2001 to March, 2002. He deposed that the Workman used to travel from his native place to the factory of the Employer to report for his duties, which is around 10 kms. away from the factory of the Employer. He deposed that he do not know as to whether due to delay in payment of wages of the Workman, he used to find difficult to travel by bus from his place of residence to the factory of the Employer. He admitted that because of delay in payment of wages of the

workers, there was consequential delay in payment of ESI contribution of the workers. He deposed that he do not know as to whether because of unavailability of ESI facility, the Workman was compelled to approach the private doctor for medical treatment of himself as well as of his family members at the relevant time. He deposed that delay in payment of wages affected the attendance of the Workman. He deposed that he is not aware as to whether whenever the Workman used to remain absent, he used to intimate to the management of the Employer about his absenteeism either by telephonically or otherwise. He deposed that he do not know as to whether the Workman used to remain absent hardly for one or two days in a month and that contents of para 9 of his affidavit in evidence is false.

14. Thus, the aforesaid oral as well as documentary evidence led by the Employer through its witness Shri Anant Devlekar is full of contradictions. The testimony of the said first witness of the Employer Shri Devlekar has been shaken and as such could not be believed.

15. After completion of the cross-examination of the first witness of the Employer Shri Anant Devlekar, the Employer closed its evidence. Thereafter, the Workman filed his affidavit in evidence in rebuttal. However, after filing of the said affidavit in evidence, neither the Workman nor Adv. H. Shirodkar appearing for the Workman, remained present on the scheduled date of hearings and as such this court was constraint to close the evidence of the Workman, after giving him ample opportunities and case was adjourned for final arguments. Thereafter, the Employer filed an application for production of additional documents, which was allowed by order of this court dated 08-11-2016.

16. The Employer examined it's another witness namely Shri Ashok Patwardhan by filing his affidavit in evidence and also produced on record certain documents. The said oral as documentary evidence adduced by the Employer through its witness Shri Ashok Patwardhan remained unchallenged for its want of denial. The said affidavit in evidence of the Employer's witness, Shri Ashok Patwardhan has been filed after closure of its evidence and without seeking any prior permission, in the garb of production of documents, namely compact disc (Exb. 29), copy of letter of the Employer dated 10-07-2012 (Exb. 30) and copy of memorandum of settlement dated 14-06-2012 (Exb. 31). The contents of affidavit-in-evidence of both the witnesses of the Employer are more or

less same. More so ever, Shri Patwardhan, in para 6 of his affidavit in evidence deposed 35 days of unauthorized absence of the Workman, similar to the deposition of para 9 of the first witness of the Employer Shri Devlekar. The said para 6 of affidavit in evidence of the said witness of the Employer do not match with the copies of extract of muster roll on record at Exb. 21-colly and as such differs from each other. Hence, I am not inclined to give any weightage to the said oral evidence of Shri Ashok Patwardhan.

17. On the contrary, the evidence on record indicates that the Workman was in the employment of the Employer continuously from the year 1982 till he was dismissed from service w.e.f. 21-09-2002. The Workman was also given promotion on 17-05-1986 (Exb. W/2) to the post of Operator/Sr. Helper from Asstt. Operator/Helper. The Employer also failed to produce on record any memo, show-cause notices, warning letters, charge-sheets etc. issued to the Workman in the past in his long term service with them. The first witness of the Employer Shri Patwardhan admitted that at the relevant time, there was delay in payment of wages to the workers. The said witness of the Employer also admitted that the Workman used to remain absent on medical ground and subsequently, he used to submit the medical certificate. In view of above, it is held that the Employer also failed to prove any of the charges of misconduct as spelt out in the charge-sheet dated 10-07-2002 (Exb. W/3), issued to the Workman, either by holding a fair and proper enquiry in accordance with principles of natural justice or also on the floor of this court. In the absence of any proved misconduct on the part of the Workman, it is held that the action of the Employer in refusing employment to the Workman w.e.f. 21-09-2002 is illegal and unjustified. The issue No. 3 is therefore answered in the affirmative.

18. Issue No. 4:

The Workman, in his statement of claim filed in the present proceedings, alleged that his termination of service is an act of unfair labour practice on the part of the Employer. The term 'unfair labour practice' has been stated in fifth schedule of the Industrial Disputes Act, 1947 and it means:

1. On the part of employers and trade union of employer's.

- 1
- 2
- 3
- 4

5. To discharge or dismiss workmen-

- (a) By way of victimization;
- (b) Not in good faith, but in the colourable exercise of the employers right;
- (c) By falsely implicating a workman in a criminal case on false evidence or on concocted evidence;
- (d) For patently false reasons;
- (e) On untrue or trumped up allegation of absence without leave;
- (f) In utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

19. In the instant case, admittedly, the Workman was in the employment of the Employer continuously from the year 1982 till he was dismissed from service w.e.f. 21-09-2002. The factory of the Employer is located at Corlim, Goa and the Workman is native of and residing at Kunkoliem, Mardol, Goa. However, a domestic enquiry was conducted at its corporate office located at Chandermukhi, Nariman Point, Mumbai, which is at around 600 km. away from the factory of the Employer. The evidence on record indicates that the Workman was only conveyed that he would be reimbursed to and fro second class railway fare from Goa to the venue of the enquiry as per his grade on the scheduled date of hearing. The evidence on record indicates that no provision/arrangements were made to bear the additional travelling and miscellaneous expenses towards food and accommodation and to take his defense representative to the venue of the enquiry at Mumbai, though the Workman informed the Employer about his inability to attend the enquiry at Mumbai along with his defense representative as he was not paid his salaries for the last several months and requested to fix the enquiry in Goa. The evidence on record indicates that the enquiry was conducted against the Workman in utter violation of the principles of natural justice.

20. The aforesaid evidence on record clearly proves that the Workman was dismissed from service on false allegation of absence without leave and in colourable exercise of the right of the employer in utter disregard of the principles of natural justice in the conduct of domestic enquiry. It is therefore held that the Workman proved that the refusal of employment to the Workman by the Employer amounts to an unfair labour practice as stated in the Vth schedule of Industrial Disputes Act, 1947. The issue No. 4 is therefore answered in the affirmative.

21. Issue No. 5:

The Employer, as and by way of its preliminary objections, filed in the written statement, submitted that the reference is null and void as there is no industrial dispute exists as defined u/s 2 (k) of the I.D. Act, 1947 and that the reference has been made by the Government of Goa, without any material on record, in haste and without application of mind. The burden to prove the aforesaid issue is therefore on the Employer. The Employer has however, failed to bring on record any material evidence in support of the aforesaid issue. Even otherwise, in the case in hand, it is not in dispute that the Party I is a 'workman' within the meaning of Section 2(s) of the I.D. Act, 1947. It is also not in dispute that the Party II Company is an 'Employer' within the meaning of Section 2(j) of the I.D. Act, 1947. Hence, the present dispute raised by the workman against the Employer pertaining to his non-employment is an 'industrial dispute' within the meaning of Section 2(k) of the I.D. Act, 1947 and as such this court has every jurisdiction to adjudicate the present reference. Consequently, the Employer failed to prove its allegations that the reference is bad-in-law for any reasons as there is no industrial dispute exists as defined u/s 2 (k) of the I. D. Act, 1947 and that the reference has been made by the Government of Goa without any material on record, in haste and without application of mind. The issue No. 5 is therefore answered in the negative.

22. Issue No. 6:

While deciding the issue No. 3 hereinabove, I have discussed and came to the conclusion that the action of the Employer in refusing employment to the Workman w.e.f. 21-09-2002 is illegal and unjustified. The evidence on record indicates that the Workman was initially appointed as Trainee w.e.f. 30-09-1982. After successful completion of training period, he was appointed as Asstt. Operator/Helper w.e.f. 01-08-1983 by the Employer, vide its order dated 01-08-1983. The Workman was subsequently promoted to the post of 'Operator/Sr. Helper' w.e.f. 01-05-1986, vide its letter dated 17-05-1986. The evidence on record indicates that the Workman was in continuous employment with the Employer from its initial appointment w.e.f. 30-09-1982 till he was dismissed from service w.e.f. 21-09-2002. The evidence on record indicates that the age of the Workman under reference as on 15-11-2011 was 39 years. The evidence on record indicates that the Employer has permanently closed its Corlim unit w.e.f. 16-06-2012 due to unavoidable and unforeseen circumstances and withdrawn its application for registration with the

Director of Industries, Trade and Commerce, vide its letter dated 10-07-2012 (Exb. 30). The Workman is therefore not entitled for any reinstatement in the service of the Employer.

23. In the case of **Deepali Gundu Surwase v/s. Kranti Junior Adhyapak Mahavidyalaya (D. ED.) and Ors., reported in (2013) 10 SCC 324**, the Hon'ble Apex Court has held that if the order of termination is void ab initio, the Workman is entitled to full back wages. The relevant para of the decision is extracted hereunder:

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial /quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

24. The principle laid down by the Hon'ble Apex Court is well recognized and is also applicable to the case in hand. In the case in hand, the Workman was in the employment of the Employer continuously w.e.f. 30-09-1982 till he was illegally dismissed from service w.e.f. 21-09-2002. The Workman pleaded that he is the only earning hand in his family, having dependent on him, his wife and three children and that he is unemployed from the date of his termination till date. The evidence on record indicates that the Employer failed to state on oath that the Workman is gainfully employed from the date of his dismissal till date, though pleaded in its written statement. The compact disc produced by the Employer on record at Exb. 29, does not show that the Workman is gainfully employed. There is no corroborative evidence to support the compact disc. Hence, it is held that the Employer failed to prove that the Workman is gainfully employed from the date of his termination till date. The Workman is therefore entitled for full back wages from the date of his termination of services till the permanent closure of the unit of the Employer w.e.f. 16-06-2012. The Workman is also entitled to the benefits of the memorandum of settlement dated 14-06-2012 signed between the management of the Employer and their workmen represented by Goa Trade and Commercial Workers' Union before the Commissioner, Labour and Employment, Panaji-Goa, u/s 12 (3) of the I.D. Act, 1947 (Exb. 31).

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the action M/s Garware Goa Nets Limited, Corlim Industrial Estate, Corlim, Goa in refusing employment to Shri Anand Kunkoliekar, Operator with effect from 21-09-2002, is illegal and unjustified.
2. The workman, Shri Anand Kunkoliekar is therefore entitled for full back wages from the date of his termination of services w.e.f. 21-09-2002 till the permanent closure of the unit of the Employer w.e.f. 16-06-2012. The Workman is also entitled to the benefits of the memorandum of settlement dated 14-06-2012 signed between the management of the Employer and their workmen represented by Goa Trade and Commercial Workers' Union before the Commissioner,

Labour and Employment, Panaji-Goa, u/s 12 (3) of the I.D. Act, 1947.

3. No order as to costs.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Department of Personnel

Order

No. 6/9/2009-PER/Part IV A

On the recommendations of Goa Services Board and with the approval of the Government, Shri Swapnil Naik, IAS, Collector-South, shall hold charge of the post of Chief Officer, Margao Municipal Council and Member Secretary, Ravindra Bhavan, Margao in addition to his own duties, until further orders, on superannuation of Shri Y. B. Tavde.

Shri Ashutosh Apte, Additional Commissioner of Excise, shall hold additional charge of the post of State Registrar & Notary Services, in addition to his own duties, until further orders.

By order and in the name of the Governor of Goa.

Shashank V. Thakur, Under Secretary (Personnel-II).
Porvorim, 1st June, 2017.

Order

No. 4/4/2015-PER

Read: Order No. 4/4/2015 dated 02-01-2017.

Governor of Goa in public interest is pleased to give charge to Shri N. Neelakanta Reddy, Superintendent Engineer (Elect.) and Additional Chief Engineer-II (ad hoc basis) in the Electricity Department as Chief Electrical Engineer in addition to his own duties until further orders, thereby relieving Shri Laxmikant D. Kolvekar of the post of Chief Electrical Engineer in Electricity Department which he was holding on officiating basis.

By order and in the name of the Governor of Goa.

Yetindra M. Maralkar, Additional Secretary (Personnel).

Porvorim, 1st June, 2017.

Corrigendum

No. 6/16/2013-PER/Part

Read: 1) Order No. 6/16/2013-PER/Part dated 21-04-2017.

The second last para 2 on page 2 of the Order read in preamble shall be corrected to read as follows:

“Smt. Smita S. Hede, Shri Shashikant C. Bhamaikar & Smt. Shaila Bhonsle are promoted “on Officiating Basis” against the vacancies of three officers whose recommendation are kept in sealed cover until further orders.

By order and in the name of the Governor of Goa.

Shashank V. Thakur, Under Secretary (Personnel-I).

Porvorim, 31st May, 2017.

Department of Power

Office of the Chief Electrical Engineer

Order

No. CEE/Estt-31-25-88/GPSC/EES/676

Read: 1) No. CEE/Estt-31-25-88/Part/2170 dated 28-08-2012.

2) No. CEE/Estt-31-25-88/Part/3099 dated 01-11-2013.

3) No. CEE/Estt-31-25-88/GPSC/EES/206 dated 15-04-2015.

Government is pleased to extend the ad hoc promotions in respect of following Executive Engineers (Elect.) for the period mentioned in column 4 below.

Sr. No.	Name of the official	Designation	Period of extension
1	2	3	4
1.	Shri Ramdas N. Bhat	Executive Engineer (Elect.)	01-04-2016 to 28-12-2016.
2.	Shri Nizamuddin Shaikh	Executive Engineer (Elect.)	01-04-2016 to 28-12-2016.

2. The above extended ad hoc promotions shall not bestow on the officers any claim/right for regular promotion and the services rendered on

ad hoc basis in the grade will not count for the purpose of seniority in that grade or for eligibility for promotion to the next higher grade.

3. The above promotions are further subject to the court decision in the Writ Petition No. 792/2008 filed before the Hon'ble High Court of Bombay at Panaji by Shri Ramdas Y. Salelkar and 7 others.

4. This issues with the approval of Goa Public Service Commission as conveyed vide their letter No. COM/II/11/16(1)/2015/207 dated 17-05-2017.

By order and in the name of the Governor of Goa.

Laxmikant D. Kolvekar, Chief Electrical Engineer & ex officio Addl. Secretary.

Panaji, 29th May, 2017.

Department of Public Works

Office of the Principal Chief Engineer

Order

No. T-27/PWD/MEU/2016-17/05

- Ref.: 1. Memorandum No. 14-17-98/PCE-EO/186 dated 22-12-2006.
 2. Amendment No. 14-17-98/PCE-EO/222 dated 19-02-2007.
 3. Amendment No. 14-17-98/PCE-EO/49 dated 04-06-2007.
 4. Amendment No. 14-17-98/PCE-PWD-EO/49 dated 18-04-2012.

In pursuance of sub-section (1) & (2) of Section 5 of the Right to Information Act, 2005 (hereafter called the “said Act”), the following officers are designated State Public Information Officers and Assistant State Public Information Officers for Public Works Department, for carrying out the function prescribed under the said Act in addition to the Orders stated in parable.

Sr. No.	Name of office	Designated as SPIO	Designated as ASPIO
1.	Office of CE (NH, R & B) for Technical matters	Engineering Officer	Junior Engineer- (CE NH, R & B).

By order and in the name of the Governor of Goa.

Uttam P. Parsekar, Principal Chief Engineer & ex officio Addl. Secretary (PWD).

Panaji, 31st May, 2017.

Department of Sports & Youth Affairs

Directorate of Sports & Youth Affairs

—
Order

No. 8/1/2001/Adhoc-Appt/ADM/D.SPORTS/PF/688

Read: 1) No. 8/1/2001/Adhoc-Appt/ADM/D.SPORTS/PF/3234 dated 25-11-2016.

2) No. 8/1/2001/Adhoc-Appt/ADM/D.SPORTS/PF/166 dated 13-04-2017.

In continuation to above referred Order, the ad hoc promotion of Smt. Jennifer Ferrao e Gonsalves to the post of Assistant Director (Physical Education North) Group 'B' Gazetted in the pay scale of PB-2 Rs. 9,300-34,800+Rs. 4,600/- is hereby continued for the period w.e.f. 01-06-2017 to 30-09-2017.

The pay of the promotee shall be fixed as per Rules.

The Government reserves the right to cancel at any time the above ad hoc promotion and revert the promotee to the post from which she was promoted.

By order and in the name of the Governor of Goa.

V. M. Prabhu Desai, Director & ex officio Joint Secretary (Sports & Youth Affairs).

Panaji, 1st June, 2017.

Department of Women & Child Development

Directorate of Women & Child Development

—
Order

No. 2-20-2016-17/Award/AWW/ICDS/969

The Government of Goa is hereby constitutes the State Level Selection Committee for selection of the awardees for State Level Awards for Anganwadi Workers under Scheme of Awards for Anganwadi Workers under Centrally Sponsored Integrated Child Development Services (ICDS) Scheme of the GOI consisting of the following:

Sr. No.	Occupation	Designation
a)	Secretary-in-charge of Women & Child Development	— Chairperson.
b)	Secretary-in-charge of (Health/Family Welfare)	— Member.
c)	Director (Women & Child Development)	— Member Secretary.

The Selection Committee shall meet once a year.

By order and in the name of the Governor of Goa.

Ruhi Redkar, Director & ex officio Joint Secretary (WCD).

Panaji, 25th May, 2017.

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